



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Mr. David Beirne
Director of Public Affairs
Office of Harris County Clerk
P.O. Box 1525
Houston, Texas 77251-1525

OR2005-01025

Dear Mr. Beirne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 218186.

The Harris County Clerk's Office (the "county clerk's office") received a request for thirteen categories of information pertaining to the November 2, 2004 General Election held in Harris County. You informed the requestor that you will make available eight of the thirteen categories of requested information. Although you take no position with respect to the remaining information, you state that the remaining five categories of information may contain proprietary information subject to exception under the Public Information Act (the "Act").¹ Pursuant to section 552.305(d) of the Government Code, the county clerk's office notified the interested third party, Hart InterCivic, Inc ("Hart"), of the receipt of the request and of its right to submit arguments to us as to why any portion of the submitted information should not be released. *See* Gov't Code §552.305(d); *see also* Open Records Decision No.

¹The five categories of information at issue are:

(9) the application source code for each voting machine, voting machine program, tabulating machine, and tabulating machine program;

(10) the object code for each voting machine, voting machine program, tabulating machine, and tabulating machine program;

(11) the database schematic for each voting machine, voting machine program, tabulating machine, and tabulating machine program;

(12) the source program for each voting machine, voting machine program, tabulating machine, and tabulating machine program; and

(13) the embedded hardware code for each voting machine, voting machine program, tabulating machine, and tabulating machine program.

542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). Hart has submitted arguments in support of withholding the requested information.

In a letter dated January 31, 2005, you inform us that the county clerk's office does not possess the requested "object" and "source" code information. You further state that "all other items requested by [the requestor] and subject to public disclosure have been itemized and included in his official cost estimate." Hart also explains to us that the county clerk's office "does not, and should not, possess" the information belonging to Hart and requested in categories 9 through 13 of this request. Moreover, Hart states that the county clerk's office does not have access to Hart's source code. The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Therefore, based on your representations and Hart's assertions that the county clerk's office does not own or have a right of access to information responsive to categories nine through thirteen, we conclude that all requested public information has been made available to this requestor. *See* Gov't Code §§ 552.002(a) (public information means information that is collected, assembled, or maintained by or for a governmental body in the transaction of official business and the governmental body owns or has a right of access to the information), .021 (concerning the availability of public information).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

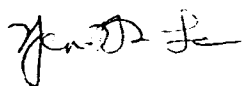
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/AEC/sdk

Ref: ID# 218186

Enc. Submitted documents

c: Mr. David Van Os
Attorney at Law
1530 North Alamo Street
San Antonio, Texas 78215
(w/o enclosures)

Mr. Peter D. Kennedy
Counsel to Hart InterCivic, Inc.
Graves Dougherty Hearon & Moody
P.O. Box 98
Austin, Texas 78767
(w/o enclosures)